

AMENDED IN SENATE JUNE 2, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1762

Introduced by Assembly Member Hayashi

February 9, 2010

An act to ~~amend~~ *repeal and add* Section 10026 of the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 1762, as amended, Hayashi. Real estate.

The Real Estate Law provides for the regulation and licensure of real estate brokers and salespersons by the Real Estate Commissioner. As used in the Real Estate Law, the term “advance fee” is defined as a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee from a principal before fully completing each and every service the licensee contracted to perform, or represented would be performed, with certain exceptions.

This bill would redefine the term “advance fee” to mean a fee ~~for services requiring a real estate license, regardless of the form of compensation, that is claimed, demanded, charged, received, or collected by a licensee from a principal~~ *for services requiring a license, or for a listing, as defined, before fully completing the service the licensee contracted to perform or represented would be performed*, with certain exceptions. The bill would, in addition to the existing exceptions, also exempt from the definition of advance fee moneys *claimed, demanded, charged, received, or collected for the purposes of advertising the sale, lease, or exchange of real property or a business promotion that are paid to other service providers, or for referral to other real estate brokers or salespersons, or in connection with mortgage loan origination activity*

opportunity in a newspaper, written publication, or other electronic media, as specified, or moneys earned for real estate services under a limited service contract, as defined, for stand-alone services. The bill would also exempt from that definition fees associated with prepaid rental listing services a contract between a real estate broker and a principal that requires payment of a commission to the broker after the contract is fully performed.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 10026 of the Business and Professions*
2 *Code is repealed.*

3 ~~10026. The term “advance fee” as used in this part is a fee,~~
4 ~~regardless of the form, claimed, demanded, charged, received, or~~
5 ~~collected by a licensee from a principal before fully completing~~
6 ~~each and every service the licensee contracted to perform, or~~
7 ~~represented would be performed. Neither an advance fee nor the~~
8 ~~services to be performed shall be separated or divided into~~
9 ~~components for the purpose of avoiding the application of this~~
10 ~~section. The term applies to a fee for a listing, advertisement or~~
11 ~~offer to sell or lease property, other than in a newspaper of general~~
12 ~~circulation, issued primarily for the purpose of promoting the sale~~
13 ~~or lease of business opportunities or real estate or for referral to~~
14 ~~real estate brokers or salesmen, or soliciting borrowers or lenders~~
15 ~~for, or to negotiate loans on, business opportunities or real estate.~~
16 ~~As used in this section, “advance fee” does not include “security”~~
17 ~~as that term is used in Section 1950.5 of the Civil Code, or a~~
18 ~~“screening fee” as that term is used in Section 1950.6 of the Civil~~
19 ~~Code. This section does not exempt from regulation the charging~~
20 ~~or collecting of a fee under Section 1950.5 or 1950.6 of the Civil~~
21 ~~Code, but instead regulates fees that are not subject to those~~
22 ~~sections.~~

23 *SEC. 2. Section 10026 is added to the Business and Professions*
24 *Code, to read:*

25 ~~10026. (a) The term “advance fee,” as used in this part, is a~~
26 ~~fee, regardless of the form, that is claimed, demanded, charged,~~
27 ~~received, or collected by a licensee for services requiring a license,~~
28 ~~or for a listing, as that term is defined in Section 10027, before~~

1 *fully completing the service the licensee contracted to perform or*
2 *represented would be performed. Neither an advance fee nor the*
3 *services to be performed shall be separated or divided into*
4 *components for the purpose of avoiding the application of this*
5 *division.*

6 *(b) For the purposes of this section, the term “advance fee”*
7 *does not include:*

8 *(1) “Security” as that term is used in Section 1950.5 of the Civil*
9 *Code.*

10 *(2) A “screening fee” as that term is used in Section 1950.6 of*
11 *the Civil Code.*

12 *(3) A fee that is claimed, demanded, charged, received, or*
13 *collected for the purpose of advertising the sale, lease, or exchange*
14 *of real estate, or of a business opportunity, in a newspaper of*
15 *general circulation, any other written publication, or through*
16 *electronic media comparable to any type of written publication,*
17 *provided that the electronic media or the publication is not under*
18 *the control or ownership of the broker.*

19 *(4) A fee earned for a specific service under a “limited service”*
20 *contract. For purposes of this section, a “limited service” contract*
21 *is a written agreement for real estate services described in*
22 *subdivision (a), (b), or (c) of Section 10131, and pursuant to which*
23 *such services are promoted, advertised, or presented as stand-alone*
24 *services, to be performed on a task-by-task basis, and for which*
25 *compensation is received as each separate, contracted-for task is*
26 *completed. To qualify for this exclusion, all services performed*
27 *pursuant to the contract must be described in subdivision (a), (b),*
28 *or (c) of Section 10131.*

29 *(c) A contract between a real estate broker and a principal that*
30 *requires payment of a commission to the broker after the contract*
31 *is fully performed does not represent an agreement for an advance*
32 *fee.*

33 *(d) This section does not exempt from regulation the charging*
34 *or collecting of a fee under Section 1950.5 or 1950.6 of the Civil*
35 *Code, but instead regulates fees that are not subject to those*
36 *sections.*

37 *SEC. 3. The changes made to Section 10026 of the Business*
38 *and Professions Code by this act are intended to supersede the*
39 *changes made to Section 10026 of the Business and Professions*
40 *Code by Chapter 630 of the Statutes of 2009, but are not otherwise*

1 *intended to alter the obligations or liability of any person pursuant*
2 *to Chapter 630 of the Statutes of 2009.*

3 ~~SECTION 1. Section 10026 of the Business and Professions~~
4 ~~Code is amended to read:~~

5 ~~10026. (a) The term “advance fee” as used in this part is a fee~~
6 ~~for services requiring a real estate license, regardless of the form~~
7 ~~of compensation, that is claimed, demanded, charged, received,~~
8 ~~or collected by a licensee from a principal before fully completing~~
9 ~~the service the licensee contracted to perform. Neither a fee, nor~~
10 ~~the services contracted for, shall be separated or divided into~~
11 ~~components for the purpose of avoiding the application of this~~
12 ~~section.~~

13 ~~(b) The term “advance fee” does not include moneys charged~~
14 ~~or collected for advertising or promotion that are paid to other~~
15 ~~service providers, or for referral to other real estate brokers or~~
16 ~~salespersons, or in connection with mortgage loan origination~~
17 ~~activity subject to this part, and does not include fees described in~~
18 ~~Article 2.3 (commencing with Section 10167) of Chapter 3, or~~
19 ~~Section 1950.5 or 1950.6 of the Civil Code.~~